

DECLARATION OF BRIAN M. DAUCHER

I, Brian M. Daucher, hereby declare the following:

4 1. I am an attorney at law, duly licensed to practice before all courts in
5 the state of California. I am a partner in the law firm of Sheppard, Mullin, Richter &
6 Hampton LLP, counsel of record for EDriver, Inc., Online Guru, Inc., Find My Specialist,
7 Inc., SeriousNet, Inc., Ravi K. Lahoti and Raj Lahoti ("Defendants"), defendants in this
8 matter. I have personal knowledge of the facts hereinafter stated and, if sworn as a
9 witness, could and would testify competently thereto.

11 2. We received electronic notice of this Court's permanent injunction
12 (filed 8/26/08) on Thursday, August 28, 2008 at approximately 12:08 p.m. A true and
13 correct copy of this ECF notice from August 28, 2008 is attached hereto as Exhibit 31. By
14 the next evening, Friday August 29, 2008, the splash page was live on the DMV.ORG
15 website.

17 3. Almost immediately, though, plaintiffs began to challenge the
18 sufficiency of defendants' efforts. On Tuesday, September 2, 2008 (after the Labor Day
19 holiday), counsel for defendants sent an initial demand that defendants make the logo on
20 the splash page smaller. A true and correct copy of this email is attached as Exhibit 32.

22 4. There followed a lengthy back and forth set of meet and confers, in
23 which defendants promptly addressed plaintiffs' concerns. Many of these are covered in
24 the Hamilton Decl. filed by plaintiffs. (Hamilton Decl., pp. 8-28.) Omitted, however, is a
25 string of communications between September 3, 2008 and September 16, 2008, in which
26 defendants explained their positions, responded to identified problems, and suggested, if
27 there was a remaining dispute, that it be submitted to the Court for clarification, not by

1 motion for contempt. A true and correct copy of these email communications from
2 September 3, 2008 to September 16, 2008 are attached as Exhibit 33. Plaintiffs did not
3 respond to either of the first two suggestions that clarification be sought (September 4 and
4 15) and in response to the third such request, in this string, plaintiffs rejected the
5 suggestion (September 16).

6

7 5. After the communication from me to counsel for plaintiffs on
8 September 25, 2008 (Hamilton Decl., p. 25), I received no further communications from
9 plaintiffs related to these issues until notice of the filing of the motion for contempt on
10 January 5, 2009.

11

12 6. Plaintiffs assert for the first time on this motion that the font size of
13 the disclaimer on the splash page is not "a true 14 point font." (Motion, p. 9, fn. 18;
14 Watson Decl., ¶ 6.) Plaintiffs never raised this issue with us at any time prior to bringing
15 this motion.

16

17 I declare under penalty of perjury under the laws of the United States of
18 America that the foregoing is true and correct and that I executed this declaration on
19 January 20, 2009 in Costa Mesa, California.



20 _____
21 BRIAN M. DAUCHER
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Exhibit 31

Brian Daucher

To: Brian Daucher
Subject: RE: Activity in Case 2:06-cv-07561-PA-CW Trafficschool.com.Inc, et al v. Edriver Inc, et al Judgment

From: cacd_ecfmail@cacd.uscourts.gov [mailto:cacd_ecfmail@cacd.uscourts.gov]
Sent: Thursday, August 28, 2008 12:08 PM
To: ecfnef@cacd.uscourts.gov
Subject: Activity in Case 2:06-cv-07561-PA-CW Trafficschool.com.Inc, et al v. Edriver Inc, et al Judgment

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RE-SENT TO THIS MAIL BOX because the mail box is unattended.

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UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

Notice of Electronic Filing

The following transaction was entered on 8/28/2008 at 12:07 PM PDT and filed on 8/26/2008

Case Name: Trafficschool.com.Inc, et al v. Edriver Inc, et al

Case Number: 2:06-cv-7561

Filer:

WARNING: CASE CLOSED on 08/26/2008

Document Number: 215

Docket Text:

JUDGMENT and PERMANENT INJUNCTION by Judge Percy Anderson, in favor of Trafficschool.com.Inc against Edriver Inc, Find My Specialist Inc, Online Guru Inc, Seriousnet Inc, Raj Lahoti, Ravi K Lahoti (MD JS-6. Case Terminated). The Court hereby orders, adjudicates and decrees that final judgment, including a permanent injunction, shall be and hereby is entered in the above entitled matter. (rmo)

2:06-cv-7561 Notice has been electronically mailed to:

Robert S Beall rbeall@smrh.com

David N Makous makous@lbbslaw.com

Daniel C DeCarlo decarlo@lbbslaw.com.kkim@lbbslaw.com

Paula C Greenspan greenspan@lbbslaw.com

Brian M Daucher bdaucher@sheppardmullin.com,edubienny@sheppardmullin.com

Mina J Hamilton hamilton@lbbslaw.com,vtowles@lbbslaw.com

Joseph Hany Tadros jtadros@sheppardmullin.com

Ashley E Merlo amerlo@sheppardmullin.com,sjohal@sheppardmullin.com

2:06-cv-7561 Notice has been delivered by First Class U. S. Mail or by fax to:

Exhibit 32

Brian Daucher

From: Mina Hamilton [HAMILTON@lbbslaw.com]
Sent: Tuesday, September 02, 2008 10:57 AM
To: Ashley Merlo; Brian Daucher
Cc: Dan DeCarlo; David Makous
Subject: DMV.ORG-Injunction Non-Compliance (25162-14)

Brian:

I am writing because your clients are still not in compliance with the Injunction. Paragraph (f) clearly states that the DMV.ORG logo must be in smaller text than the disclaimer text. The DMV.ORG text in the logo is much larger than the text in the disclaimer.

Please advise as to why your clients are ignoring this clear mandate in the Court's Permanent Injunction.

This notice is without waiver of other non-compliance issues that may exist.

Sincerely,

Mina I. Hamilton, Esq.
Lewis Brisbois Bisgaard & Smith LLP
221 North Figueroa Street, Suite 1200
Los Angeles, California 90012
(213) 250-1800 (phone)
(213) 250-7900 (fax)
e-mail: hamilton@lbbslaw.com

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Exhibit 33

Brian Daucher

From: Mina Hamilton [HAMILTON@lbbslaw.com]
Sent: Tuesday, September 16, 2008 4:06 PM
To: Brian Daucher
Cc: DAN DECARLO; DAVID MAKOUS
Subject: RE: DMV.ORG-Injunction Non-Compliance-3rd Notice (25162-14)

Brian:

We have responded to the issue of the logo. Again, there is nothing to be clarified so we decline your invitation to engage in "mutual briefing", whatever that means. We trust you will make whatever arguments you deem appropriate to defend against the claim of contempt so the issues will be briefed on both sides. We would again urge your clients to simply abide by the Injunction and make the text in the logo smaller than 14 point font- it really isn't that complicated. As for the other points, as we noted before, it is tedious and expensive for our clients to have to act as the police regarding this Injunction. Nothing we have raised is complicated- these are black and white violations I think we have exhausted our meet and confer efforts on the issues we have already raised and if compliance is not completed within the next 24 hours, we will proceed with our contempt motion and seek available remedies.

Regards,

Mina I. Hamilton, Esq.
Lewis Brisbois Bisgaard & Smith LLP
221 North Figueroa Street, Suite 1200
Los Angeles, California 90012
(213) 250-1800 (phone)
(213) 250-7900 (fax)
e-mail: hamilton@lbbslaw.com

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recipient (or authorized to act on behalf of the
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>>>

From: "Brian Daucher" <BDaucher@sheppardmullin.com>
To: "Mina Hamilton" <HAMILTON@lbbslaw.com>
Date: 9/16/2008 2:12 PM
Subject: RE: DMV.ORG-Injunction Non-Compliance-3rd Notice (25162-14)

Mina,

I apologize for not responding yet to your prior email. I have trial Monday, mediation tomorrow, and a host of other pressing client needs. I do believe we have responded in a timely fashion to all of your demands and I would urge you to take a civil tone in this process.

With respect to items 1-3 on your prior email:

1. Our clients are investigating this issue.
2. We cannot duplicate the problem you claim; the page appears to work as expected.
3. Netscape is no longer a supported browser; see <http://blog.netscape.com/2007/12/28/end-of-support-for-netscape-web-browsers/>

With respect to the logo issue, we have had no response from you to our proposal for mutual briefing if you really want to raise the issue with the Court (beyond having already raised it in your opposition to our ex parte). If you refuse our offer and instead pursue contempt proceedings, we will regard that as unkind. For reasons previously stated, we regard our interpretation of the order as reasonable.

Regards,

Brian.

From: Mina Hamilton [mailto:HAMILTON@lbbslaw.com]
Sent: Tuesday, September 16, 2008 1:56 PM
To: Brian Daucher
Cc: DAN DECARLO; DAVID MAKOUS
Subject: RE: DMV.ORG-Injunction Non-Compliance-3rd Notice (25162-14)

Brian,

We are waiting on your responses to Items 1-3. Have your clients fixed the issues or do they intend to? The disclaimer is still not appearing on mobile devices. We shouldn't have to police compliance like this...especially when your clients are the self-professed "online guru's".

Regarding the logo and title tags, the injunction is clear; there is nothing to clarify. This isn't a matter of wishful thinking that the Court meant something other than what it wrote in the Injunction.

-Mina

Mina I. Hamilton, Esq.
Lewis Brisbois Bisgaard & Smith LLP
221 North Figueroa Street, Suite 1200
Los Angeles, California 90012
(213) 250-1800 (phone)
(213) 250-7900 (fax)
e-mail: hamilton@lbbslaw.com

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>>>

From: "Brian Daucher" <BDaucher@sheppardmullin.com>
To: "Mina Hamilton" <HAMILTON@lbbslaw.com>
Date: 9/15/2008 8:31 PM
Subject: RE: DMV.ORG-Injunction Non-Compliance-3rd Notice (25162-14)

Mina,

We will look into items 1-3 promptly (as we have with all issues you have identified in past).

With respect to the logo, we did not say compliance was no feasible; we said that your interpretation of the injunction is not reasonable for reasons stated previously. The disclaimer is plain vanilla, obvious, and notorious. We fully disagree with your tile tag analysis; in our view, this is not a good faith complaint.

We reiterate our offer to put the logo issue to the court on joint briefing for clarification if you are really interested in resolving the matter. A contempt application which ignores that prior offer, now aged, is not reasonable. If you want to propose a joint briefing schedule for clarification, just let us know.

Regards,

Brian.

From: Mina Hamilton [mailto:HAMILTON@lbbslaw.com]
Sent: Monday, September 15, 2008 4:32 PM
To: Brian Daucher
Cc: DAN DECARLO; DAVID MAKOUS
Subject: DMV.ORG-Injunction Non-Compliance-3rd Notice (25162-14)

Brian,

We disagree that complying with the Injunction regarding the logo is not feasible and we will be moving for contempt on that issue. The Injunction is clear that the logo text must be smaller than 14 point font-it makes no exception for DMV.ORG. We also will be moving for contempt on the issue of the Title Tags as discussed below, since your clients have not removed those descriptions.

More issues that have come to our attention:

1) The Acknowledgment Page does not show up when viewing the website on mobile devices (e.g., Blackberry, Treo Smartphone). This is a serious non-compliance issue given the increasingly prevalent use of mobile devices.

2) The Acknowledgment Page does not come up again after the browser is closed on MACs with Safari or FireFox.

3) The Acknowledgment Page does not correctly load on the Netscape browser. See attached.

Again, please cause your clients to come into immediate compliance or we will have no other choice but to seek contempt and sanctions as provided by law for noncompliance.

These contentions are without regard to any and all other violations by your client.

Sincerely,
Mina

From: "Brian Daucher" <BDaucher@sheppardmullin.com>
To: "Mina Hamilton" <HAMILTON@lbbslaw.com>
CC: "Ashley Merlo" <AMerlo@sheppardmullin.com>
Date: 9/4/2008 7:06 AM
Subject: RE: DMV.ORG-Injunction Non-Compliance-2nd Notice (25162-14)
Mina,

We disagree with your analysis. Here is our analysis:

1. The injunction requires all caps 14 point font for the disclaimer, which we have adhered to.

2. If we make the letters "DMV.ORG" in the logo less than 14, as you suggest, the logo becomes illegible (see attached); we believe Judge Anderson's injunction can be reasonably read to refer to the font size of the phrase "The Unofficial Guide to the DMV" which is smaller than the 14 point font used in the disclaimer (but again legible). We have used a logo that does not overwhelm the disclaimer and is in fact smaller than the disclaimer. Any consumer passing through must find the CONTINUE button, also in smaller font, below the disclaimer, guaranteeing a read of the all caps disclaimer.

For these reasons, we believe that the splash page we have complies with the injunction.

If you still disagree, let's agree on a procedure for a mutual request for clarification of the order and file early next week.

I can't see that this would justify unilateral contempt proceedings.

Regards,
Brian.

From: Mina Hamilton [mailto:HAMILTON@lbbslaw.com]
Sent: Wednesday, September 03, 2008 4:21 PM
To: Brian Daucher; Ashley Merlo
Cc: DAN DECARLO; DAVID MAKOUS
Subject: RE: DMV.ORG-Injunction Non-Compliance-2nd Notice (25162-14)

Brian,

We agree on one thing: the injunction is "plain vanilla" and crystal clear. The font size of DMV.ORG on your client's splash page is larger than the font in the disclaimer, in clear violation of paragraph (f), which orders that the disclaimer "shall appear in fourteen (14) point font, and **shall be in larger font** size than that used in the DMV.ORG logo and the 'continue' button."

Are you seriously contending that the word DMV.ORG in your client's logo is not in a "font" and therefore your client's usage of the DMV.ORG words is somehow excluded from the Court's permanent injunction requiring that it be smaller than the disclaimer font?

Please cause your client to come into immediate compliance or we will seek contempt and sanctions as provided by law for noncompliance.

This contention is without regard to any and all other violations by your client.

-Mina
Mina I. Hamilton, Esq.
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Los Angeles, California 90012
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(213) 250-7900 (fax)
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>>>

From: "Brian Daucher" <BDaucher@sheppardmullin.com>
To: "Mina Hamilton" <HAMILTON@lbbslaw.com>
CC: "Ashley Merlo" <AMerlo@sheppardmullin.com>

Date: 9/3/2008 10:33 AM

Subject: RE: DMV.ORG-Injunction Non-Compliance-2nd Notice (25162-14)

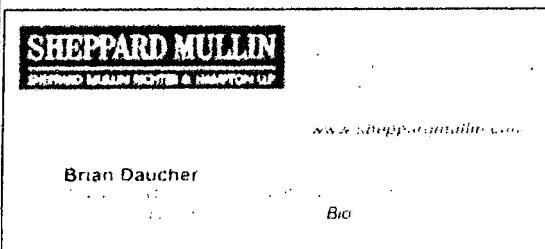
Mina,

I was with clients all day yesterday and today as well (on a break).

I do believe that the splash page is in compliance with what Judge Anderson has required; we doubt very much that he would disagree, it is plain vanilla.

I will ask the client to look into matters 2 and 3, though I cannot replicate your results (or understand your concern 3), regards,

Brian.



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From: Mina Hamilton [mailto:HAMILTON@lbbslaw.com]

Sent: Wednesday, September 03, 2008 10:20 AM

To: Ashley Merlo; Brian Daucher

Cc: Dan DeCarlo; David Makous

Subject: DMV.ORG-Injunction Non-Compliance-2nd Notice (25162-14)

Brian,

I never heard back from you regarding your client's reason for violating the Injunction, paragraph (f), which requires the DMV.ORG logo text to be smaller than the disclaimer text. Why is the DMV.ORG text in the logo still much larger than the text in the disclaimer, and does your client intend to change this and when? The fact that you are filing a motion to stay the injunction in no way excuses your clients from immediate compliance with the Injunction Please consider this an ongoing meet and confer on non-compliance issues before the filing of a motion for a contempt order. We expect, as part of the meet and confer, that you respond to these emails with your clients position. Let me know if you would like to have a phone conversation instead. I have attached screen-

shots to this email so that you can readily see the non-compliance by your clients.

We have also noticed that there is an image which appears on the <http://www.dmv.org/ca-california/drivers-ed.php#> page (see attached screen shot-2nd page). This is in violation of the Injunction, paragraph (e), which states "nothing other than the content in paragraph (c) and the DMV.ORG logo shall be visible to the visitor when viewing the acknowledgment splash page." Please confirm whether or not your client intends to immediately change this and any other pages that are displaying this and/or any other graphic or text that circumvents the Injunction.

Also, the Title Tags are in violation of the Injunction, paragraph (e) as well and we understand that your client controls this text . There are Title Tags on the <http://www.dmv.org/#> page and other pages of the website that are in violation of the order (see screen shots attached). For example, on the aforementioned drivers ed page above, in the blue title tag (very top of the browser), it states: *California Drivers Ed Online Guide - CA Driver Education Information -DMV.ORG* Please let us know if/when your client intends to correct this.

Again, this notice is without waiver of other non-compliance issues that may exist.

Regards,

Mina I. Hamilton, Esq.
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221 North Figueroa Street, Suite 1200
Los Angeles, California 90012
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(213) 250-7900 (fax)
e-mail: hamilton@lbbslaw.com

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